IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

FRIDAY, THE 5TH OCTOBER 2007 / 13TH ASWINA 1929

Crl.Rev.Pet.No. 622 of 2000()

CRA.336/1998 of PRL. SESSIONS COURT, THALASSERY
CC.289/1996 of JUDL.MAGISTRATE OF FIRST CLASS COURT-I, KANNUR

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REVN. PETITIONER:

P.ABDUL JABBAR, S/O. ABDULLA,
AGED 37 YEARS, CITY AIR TRAVELS,
IST FLOOR, ROOM NO.3, BADRIYA LODGE,
THALIPARAMBA.

BY ADV. SRI.M.V.AMARESAN

RESPONDENT:

STATE OF KERALA REP.BY,
PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.AMJAD ALI

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 05/ 10 /2007 , THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

tss

CRRP. NO.622/2000

ORDER ON CRL.MP 3473/2000 IN CRRP. NO.622/2000

DISMISSED

05.10.2007 **SD/- K.R.UDAYABHANU, JUDGE**

/TRUE COPY/

P.S. TO JUDGE

tss

K.R. UDAYABHANU, J.

CRL.R.P.NO. 622 OF 2000

DATED THIS THE 5TH OCTOBER 2007

ORDER

The revision petitioner stands convicted for the offence under Section 138 of the Negotiable Instruments Act and sentenced to undergo simple imprisonment for three months. It is the case of the complainant that on 20-1-1996 the complainant gave a sum of R.10,000/- to the accused on his promise to provide him a Visa to UAE. As the accused could not arrange Visa, he had issued impugned cheque. When the cheque was presented for encashment, the same was dishonoured for want of funds in the account of the accused. Lawyer notice was issued. Neither reply was sent nor the amount repaid.

2. The evidence adduced in the matter consisted of the testimony of PW1 and Exts.P1 to p5.

3. The trial court considered the version of PW1, the power of attorney holder of the complainant and convicted the accused. Evidently, the accused has not sent even a reply to the notice received. It is the case of the complainant that he gave the amount to the accused. The contention of the counsel is that the power of attorney holder is not aware of the details of the transaction and hence

the accused ought to have been acquitted. I find that the power of attorney holder, i.e. PW1 has testified that he was present and the amount was given and the accused issued the cheque and gave the same to the complainant. In the circumstances, I find that the prosecution case do stands establaished. Of course, the appeal was dismissed as the appellant/accused was absent. The transaction is of January 1996. Hence, the request of the counsel for the petitioner to get the matter remitted back to the appellate court cannot be allowed. The conviction is confirmed.

Counsel has pleaded for modification of sentence. In the circumstances, the sentence is modified to imprisonment till the rising of the court and to pay a compensation of Rs.15,000/- to the complainant and in default to undergo simple imprisonment for three months. He shall appear before the Judicial First Class Magistrate-I, Kannur on 7-1-2008 to receive sentence. The Crl. revision petition is disposed of accordingly.

K.R.UDAYABHANU, JUDGE

ks.

K.R.UDAYABHANU, J

CRL.R.P. NO. 622 of 2000

ORDER

5-10-2007